



Comptroller General
of the United States

Washington, D.C. 20548

145703

Decision

Matter of: PEC Construction, Inc.

File: B-245462

Date: October 1, 1991

Paralee White, Esq., Cohen & White, for the protester, Herman M. Braude, Esq., Braude & Margulies, for Grunley Construction Co., Inc., an interested party, Catherine M. Evans, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest alleging that solicitation failed to designate option prices to be evaluated, and that agency therefore improperly evaluated option prices in determining low bid, is untimely as it essentially concerns an apparent solicitation defect, and therefore should have been filed before bid opening.

DECISION

PEC Construction, Inc. protests the award of a contract to Grunley Construction Co., Inc. under invitation for bids (IFB) No. GS-11P91MKC0225, issued by the General Services Administration (GSA) for installation of a sprinkler system and fire safety renovation of a government office building. PEC alleges that award to Grunley was improper because GSA did not evaluate bids in accordance with the terms of the solicitation.

We dismiss the protest as untimely.

The IFB requested a lump-sum bid for sprinkler system installation and a unit price for additional asbestos abatement. It also included an option for ceiling removal and replacement, consisting of a lump-sum price for the basic work and three unit prices related to ceiling fixtures and ductwork. The IFB provided for evaluation of bids as follows:

"The low bidder for purposes of award is the responsible bidder offering the lowest price for the base bid (consisting of the lump-sum bid and any associated unit price bids extended by the applicable number of units shown on the bid form) plus (2) the options together with unit prices designated to be evaluated within the funds available."

The IFB did not contain a separate provision designating options or unit prices to be evaluated.

Nine bids were received on the August 26, 1991 bid opening date. Bids were evaluated by adding the lump sum and associated unit price to the option price and its associated unit prices. Although PEC's price for the basic requirement--lump sum plus unit price--was the lowest, Grunley was the low evaluated bidder when the option price and associated unit prices were included; PEC was third low. Upon learning that GSA intended to award the contract to Grunley, PEC filed this protest.

PEC alleges the agency improperly failed to evaluate the bids in accordance with the terms of the IFB. Specifically, PEC argues that since the IFB provided for evaluation only of "the options together with unit prices designated to be evaluated," and did not designate any options or unit prices to be evaluated, only the lump-sum price should have been evaluated.

Under our Bid Protest Regulations, protests based upon alleged improprieties apparent on the face of a solicitation must be filed by the time designated for bid opening. 4 C.F.R. § 21.2(a)(1) (1991), as amended by 56 Fed. Reg. 3759 (1991). Although PEC characterizes its protest as a challenge to the agency's application of the IFB evaluation scheme, in fact, it essentially is founded on an ambiguity in the evaluation scheme itself--the IFB's failure to "designate" specific options or unit prices to be evaluated. While we think the above-cited IFB clause did in fact clearly provide that option prices would be evaluated, to the extent that it was not clear to PEC what prices the agency would evaluate absent a specific designation, PEC was required to protest this apparent defect in the IFB before bid opening. Since it failed to do so, its protest is untimely. Home Care Med., Inc., B-245189, Aug. 21, 1991, 91-2 CPD ¶ _____. PEC could not simply make assumptions regarding the meaning of the IFB with respect to the evaluation of options, and then expect relief when the agency did not act in the manner PEC assumed it would. See id.; General Eng'g and Machine Works, B-223929, Oct. 27, 1986, 86-2 CPD ¶ 477.

PEC asserts that, "on information and belief," the agency had insufficient funds available to make an award that included the option. The agency has submitted a copy of a document

certifying that, at the time the solicitation was issued, \$6,609,464 was available for the project; Grunley's price was \$5,284,714.

The protest is dismissed.

A handwritten signature in black ink, appearing to read "John M. Melody". The signature is stylized with a large initial "J" and a cursive "M".

John M. Melody
Assistant General Counsel